



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS-FV-12-0043; FV12-948-1 IR]

Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule modifies the grade requirements for potatoes handled under the Colorado potato marketing order, Area No. 2 (order). The order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). This rule relaxes the minimum grade requirement for size B and 1-inch to 1¼-inch diameter round, red-skinned potatoes handled under the Colorado potato marketing order from U.S. No. 1 to U.S. Commercial. This change is expected to facilitate the handling and marketing of the Area No. 2 potato crop, provide producers and handlers with increased returns, and supply consumers with increased potato purchasing options.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]; comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE

FEDERAL REGISTER] will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA;

Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order

may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule modifies the minimum requirements for certain potatoes handled under the order's handling regulation. This rule relaxes the minimum grade requirement for all size B (1½-inch to 2¼-inch diameter) and 1-inch to 1¾-inch diameter round, red-skinned potatoes handled under the order to U.S. Commercial. Prior to this change, round, red-skinned potatoes in the above size ranges were required to meet or exceed the requirements of the U.S. No. 1 grade standard if such potatoes were to be shipped outside the State of Colorado. This rule is a relaxation of the handling regulation and will make the

minimum grade requirements for round, red-skinned potatoes consistent with the current minimum grade requirements for all other varieties of similarly sized potatoes handled under the order. This change was unanimously recommended by the Committee at a meeting held on July 19, 2012.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of regulations issued pursuant to § 948.22.

Under the Colorado potato marketing order, the State of Colorado is divided into three areas of regulation for marketing order purposes. These include: Area 1, commonly known as the Western Slope; Area 2, commonly known as San Luis Valley; and, Area 3, which consists of the remaining producing areas within the State of Colorado not included in the definition of Area 1 or Area 2. Currently, the order only regulates the handling of potatoes produced in Area 2 and Area 3. Regulation for Area 1 has been suspended.

The grade, size, and maturity regulations specific to the handling of potatoes grown in Area 2 are contained in § 948.386 of the order. The current handling regulation

requires that all potatoes handled under the order must meet the minimum requirements of the U.S. No. 2 grade and be 2 inches or greater in diameter. Smaller size potatoes may be handled if such potatoes meet the requirements of certain higher grades. For all varieties, except round, red-skinned varieties, size B and 1-inch to 1¼-inch diameter potatoes may be handled if such potatoes meet the requirements of the U.S. Commercial grade. Round, red-skinned varieties of the above size profiles must meet the minimum requirements of the U.S. No. 1 grade standard to be handled under the order.

At the July 19 Committee meeting, industry participants indicated to the Committee that there is an emerging market for smaller size U.S. Commercial grade round, red-skinned potatoes for use in certain value added potato products. They further stated that the order's current U.S. No. 1 grade requirement for small-size, round, red-skinned potatoes precludes them from supplying that market. Relaxing the minimum grade requirement for such potatoes will allow area handlers to compete with other domestic potato producing regions for this developing market segment.

Changing the handling regulations to allow small-size, round, red-skinned potatoes to meet or exceed U.S. Commercial grade, instead of the more stringent U.S. No. 1 grade, will make more small potatoes available to consumers and will allow Area 2 handlers to move more of the area's potato production into the fresh market. This change is expected to benefit producers, handlers, and consumers of round, red-skinned potatoes.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 80 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and

approximately 180 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2010-2011 marketing year, the most recent full marketing year for which statistics are available, 15,583,512 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$12.75 per hundredweight, the Committee estimates that 71 Area No. 2 handlers, or about 89 percent, had annual receipts of less than \$7,000,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for 2010-2011 was \$9.37 per hundredweight. The average annual fresh potato revenue for each of the 180 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$811,208. Consequently, on average, many of the Area No. 2

Colorado potato producers may not be classified as small entities.

This rule relaxes the minimum grade requirement for size B and 1-inch to 1¾-inch diameter round, red-skinned potato varieties from U.S. No. 1 grade to U.S. Commercial. Authority for this action is contained in §§ 948.21 and 948.22.

This relaxation is expected to benefit the producers, handlers, and consumers of Colorado potatoes by allowing a greater quantity of fresh potatoes from the production area to enter the market. This anticipated increase in volume is expected to translate into greater returns for handlers and producers, and more purchasing options for consumers.

After discussing possible alternatives to this rule, the Committee determined that a relaxation in the grade requirement for small-size, round, red-skinned potatoes from U.S. No. 1 to U.S. Commercial would sufficiently meet the industry's current needs while maintaining the integrity of the order. During its deliberations, the Committee considered making no changes to the handling regulations as well as relaxing the minimum grade requirement for all small-size potatoes to U.S. No. 2. The Committee believes that a relaxation in the handling

regulation for small potatoes is necessary to allow handlers to pursue new markets, but lowering the grade requirements for small-size potatoes to U.S. No. 2 would erode the quality reputation of the area's potatoes. The Committee, therefore, found that there were no other viable alternatives to the recommended relaxation of the minimum grade requirements for round, red-skinned potatoes handled under the order from U.S. No. 1 to U.S. Commercial.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the July 19, 2012, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a modification of the grade and maturity requirement prescribed under the Colorado potato marketing order. Any comments received will be considered prior to the finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is hereby found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action is a relaxation of the current handling regulation; (2) handlers are already shipping potatoes from the 2012-2013 crop and may want to take advantage of this relaxation as soon as possible; (3) handlers are aware of this rule, which was initiated by the industry and unanimously recommended by the Committee at a public meeting during which interested parties had an opportunity to provide input; and (4) this

rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948 - IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 948.386, paragraphs (a)(3) and (4) are revised to read as follows:

§ 948.386 Handling regulation.

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(a) * * *

(3) 1½-inch minimum to 2¼-inch maximum diameter (Size B). U.S. Commercial grade or better.

(4) 1-inch minimum diameter to 1¾-inch maximum diameter. U.S. Commercial grade or better.

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Dated: December 26, 2012

David R. Shipman
Administrator
Agricultural Marketing Service

Billing code 3410-2 P

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